

**FIXED BASE OPERATOR'S (FBO)  
AGREEMENT BETWEEN  
100 OCTANE AVIATION  
AND  
THE CITY OF SUPERIOR, WISCONSIN**

**THIS AGREEMENT**, made and entered into this 1<sup>st</sup> day of May, 2018, by and between the CITY OF SUPERIOR (City), State of Wisconsin, Douglas County, a municipal corporation existing by and under the authority of the laws of the State of Wisconsin, hereinafter referred to as the LESSOR, and 100 Octane Aviation, located at 4804 Hammond Avenue, Superior, Wisconsin, hereinafter referred to as the LESSEE.

**WHEREAS**, the Lessor owns and operates the Richard I Bong Airport situated at 4804 Hammond Avenue, Superior, Wisconsin, and possess the power and authority to grant certain rights and privileges with respect thereto, including those set forth in this agreement;

**WHEREAS**, the Lessor is desirous of leasing to Lessee certain premises hereinafter more fully described, located on said airport, for permitted uses as set forth below;

**WHEREAS**, the Lessor does not deem this activity to be inconsistent or incompatible with its operation of the Airport;

**I. PERMITTED USES**

- A. Selling aircraft, engines, accessories and parts.
- B. Repairing and servicing of aircraft, engines, accessories and parts.
- C. Maintaining and operating full aircraft servicing facilities.
- D. In no event shall the City be deemed to have granted the Lessee the right to use of any airport property for any other purpose other than identified in this Agreement.

**II. LEASE**

- A. For the consideration set forth below, the Lessor does hereby lease to the Lessee the following described premises:

**Northeast corner of the A-1 Hanger, at the Bong Airport, 4804  
Hammond Avenue, Lot A1 in the City of Superior, Douglas County,  
Wisconsin.**

- B. Lessee shall have non-exclusive use of the adjacent ramp area for aircraft parking and access. Lessee shall have use of two (2) tie-downs directly north of the A1 hangar.

- C. Lessee understands and agrees that the access granted is a privilege and is terminable at any time, at the City's discretion and judgment, based on Lessee violation of this Agreement and/or for reasons of airport efficiency (i.e., when necessary to serve the civil aviation needs of the airport and/or safety (i.e., when necessary for the safe operation of the airport or reports of safety violation by other airport Lessees or Manager).

City will provide written notice of termination and an opportunity to cure within a prescribed period of time, to Lessee. Activities authorized referenced herein may be, at the City's discretion and judgment, limited or suspended during the cure period.

Lessee may file a complaint with the Minneapolis Flight Standards District Office regarding the reasonableness of the City's actions (i.e., those which restrict or deny Lessee use of the airport). Both parties acknowledge that the FAA is empowered to make the final determination as to the reasonableness of the City's actions complained of by Lessee.

- D. It shall be the duty of the Lessee, unless otherwise mutually agreed between the Public Works Director and the Lessee, to provide and maintain all ingress and egress for the benefit of the public to the facility and such roads, taxiways and other items that might become involved in the operation of Lessee's business without expense to the Lessor.
- E. Ingress to and egress from the demised premises shall be limited to streets, taxiways, driveways and sidewalks designated for such purposes by the Lessor, which right shall extend to Lessee's employees, passengers, guests, invitees and patrons.
- F. Lessee shall work cooperatively with the Airport Manager to develop periodic review of operation guidelines and additional safety protocols applicable to Lessee business activities at the Airport.
- G. Lessee shall have the right to install, operate, maintain, repair and store, subject to approval of Lessor in the interests of safety and convenience of all concerned, all equipment necessary for the conduct of the Lessee's business.
- H. Lessee shall have the right to maintain and operate a full aircraft servicing facility and to sell aircraft, engines, accessories and parts. Lessee may also maintain and operate a repair shop to repair aircraft, engines, instruments, propellers and accessories in connection with said business. The right to conduct such activities shall apply to other persons as well as aircraft belonging to Lessee.

### III. RATES

- A. Rates for the privileges being granted by the issuance through this use agreement of the premises described in Paragraph II (A) will be a total of three hundred fifty dollars (\$350.00) per month, payable in monthly installments on or before the first of each and every month during the term of this lease. In addition, Lessee shall pay any and all utility costs incurred by this operation, such as, but not limited to, heat and electricity. Failure

on the part of Lessee to pay the rent hereunder within thirty (30) days after the same shall become due, except as provided in for the case of the airport being closed by any lawful authority, shall authorize Lessor, at its option and without any legal proceedings, to declare this lease void, cancel the same, and re-enter and take possession of the premises. Lessee shall pay, in a timely manner, all taxes or assessments that may be levied against the personal property of the Lessee.

#### IV. TERM

- A. The term of this lease shall be for a period of five (5) years commencing on the date above first written.
- B. It is expressly understood between the Lessor and the Lessee that the Lessee shall have the option of renewing this lease for subsequent five (5) year extensions subject to the mutual agreement of terms and fees, unless terminated earlier in accordance with the terms and provisions to this agreement.
- C. If the Lessee, during the term of this lease, ceases to provide the services described in Section I above, to the general public, the Lessor shall have the right to terminate this agreement upon ten (10) days written notice to the Lessee.

#### V. INSURANCE

- A. During the full term of this lease and during all extensions thereto the Lessee shall, at its sole cost and expense, maintain a policy or policies of insurance as follows:

- 1. *Commercial General Liability/ Premises Liability*

- One hundred thousand dollars (1,000,000.00) combines single limit (i.e., up to \$1,000,000.00 per occurrence for bodily injury and/or property damage arising out of a single loss, with no sub-limits).

- 2. *Automobile Liability:*

- Minimum liability coverage required by Wisconsin Law, but not less than:

- o Fifty thousand (\$50,000.00) for injury or death of one person;
    - o One hundred thousand (\$100,000.00) for injury or death or two or more people; and
    - o Fifteen thousand (\$15,000.00) for property damage.

Underinsured and underinsured motorist coverage is also required, each with minimum limits of one hundred thousand (\$100,000.00)/ three hundred thousand (\$300,000.00) for bodily injury coverage.

- 3. *Workers Compensation Insurance:*

- If and as required under Wisconsin Law.

Each insurance policy shall identify the City as “additionally insured”.

The amount and type of insurance required under this section may be reviewed and adjusted at the end of each eight month period during this lease, provided that any increase in insurance coverage shall be reasonable.

The policy of insurance shall be approved by the City Attorney as to legal form before it is filed, and shall contain a provision that the same may not be canceled before the expiration of its term, except upon thirty (30) days written notice to the Lessor. Lessee shall not exercise its privilege to use the Airport for the herein referenced purpose; until and unless said insurance is in full force and effect.

Each policy shall be issued by a company licensed to do business in Wisconsin.

Lessee agrees to defend, indemnify and hold the City completely harmless from and against any and all claims, costs, (including attorney fees and litigation expenses), damages fines, judgments, liabilities and losses arising out of, resulting from, or in any way connected with the Lessee, Lessees' officer's, agents, employees, contractors, or customers use of or activities at the Airport. This includes, but is not limited to the presence or spill of hazardous substances.

This section shall survive the expiration of this Agreement.

## VI. FAA AND OTHER LEGAL PROVISIONS

- A. The Lessee, for himself, his personal representatives, successors in interest, and assigns, agrees that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the Lessee shall use the premise in compliance with all other requirements imposed by or pursuant to Title 39, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination, in Federally Assisted Programs of the Department of Transportation- Effectuation of the Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.
- B. Lessee agrees to comply with such enforcement procedures as the United States or State of Wisconsin might demand that the Lessor take in order to comply with the Sponsor's assurances.
- C. Lessee shall offer proof, to City's reasonable satisfaction, that Lessee holds all required local, state and/or federal certificates, licenses or permits, including but not limited to a seller's permit.

- D. Lessee in the conduct of its authorized aeronautical business activities on said demised premises and on said airport, shall furnish proof, prompt and efficient service adequate to meet the demands for its services at the airport, and shall furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable, and not unjustly discriminatory prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchases.
- E. Lessee shall have the right and privilege of engaging in and conducting a fixed base operation on the premises of the airport under the terms and conditions as set forth hereinafter, provided, however, that this agreement shall not be construed in any manner to grant Lessee or those claiming under it the exclusive right to use the premises and facilities of said airport other than those premises leased exclusively to Lessee hereunder.
- F. It is clearly understood by the Lessee no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including, but not limited to maintenance and repair) that it may choose to perform with FAA Regulations.

## VII. ADDITIONAL LEASE PROVISIONS

- A. Lessee may not at any time during the term of this lease, assign, sublease, hypothecate or transfer this agreement or any interests or rights under this agreement, without the consent of the Lessor.
  - 1. Lessee agrees to observe and obey during the term of this lease all laws, ordinances, rules and regulations promulgated and enforced by the Lessor and by any other proper authority having jurisdiction over the conduct of the operations at the airport. It is understood by the Lessee that the airport is directly regulated by the City of Superior, through its Airport Manager and in realizing this, the Lessee agrees to fully cooperate with the Airport Manager, inform the Airport Manager of any change in operations or proposals relating to the airport and provide the Manager with any such information regarding operations as the Manager may request.
  - 2. Lessee agrees to hold the Lessor free and harmless from loss from each and every claim and demand of whatever nature, made on behalf of or by any person or persons, for any wrongful, careless or negligent act or omission and damages by reason of such acts or omissions.

3. So long as Lessee conducts his business in a fair, reasonable, respectable and workmanlike manner, Lessee shall peaceably have and enjoy the leased premises and all the rights and privileges herein granted.
4. Lessee agrees that no signs or advertising matter may be erected without the consent of the Lessor or that is not suitable to the Lessor, or unreasonable.
5. During any period when the airport shall be closed by any lawful authority restricting the use of the airport in such a manner as to interfere with the use of same by Lessee for his business operation, the rent shall abate and the period of such closure shall be added to the term of this lease so as to extend and postpone the expiration thereof.
6. Failure on the part of the Lessee to pay the rent hereunder within thirty (30) days after same shall become due, except as provided in the preceding paragraph shall authorize Lessor, at its option and without any legal proceedings, to declare this lease void, cancel the same, and re-enter and take possession of the premises, upon giving a ten (10) day notice by registered mail.
7. If Lessee shall violate any of the restrictions in this lease, or shall fail to keep any of its covenants after written notice to cease such violation and shall fail to correct such violation within thirty (30) days, the Lessor may at once, if he so elects, terminate the same and take possession of the premises.
8. The Lessor reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this agreement.
9. The Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance. If the physical development of the airport requires the relocation of the Lessee, the Lessor agrees to provide a comparable location and agrees to relocate all buildings or provide similar facilities of Lessee in this regard.
10. The Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of Lessee in this regard.
11. During the time of war or national emergency, the Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and if such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

12. Obstructions at Richard I. Bong Airport; the Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the Lessor, would limit the usefulness of the airport or constitute a hazard to aircraft.
  13. Lessee shall, upon approval by the Lessor and prior to any construction of any nature within the boundaries of the airport, prepare and submit to the Federal Aviation Administration, Great Lake Regional Office, Attention AGL-530, 2300 E. Devon Avenue, Des Plaines, Illinois, 60018, one (1) executed set (four copies) of FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulations, Part 77. This notice must be submitted at least thirty (30) days prior to the date of the proposed construction or alteration of the date that an application for a construction permit is filed, whichever is earlier.
  14. Lessee agrees to maintain operations during a schedule of hours, which schedule shall be filed with and approved by the Airport Manager. Hours of operation shall not be reduced below the minimum without written consent, except during any period when the airport is closed by any lawful authority restricting the use thereof in such a manner as to interfere with the use of the same by the Lessee for its operation.
- B. This lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport.
  - C. Lessee shall be solely responsible for and shall take the actions necessary to eliminate the harmful effects from the Lessee, or Lessee officer's, agents, employees, contractors, subcontractors, or customers discharge, spilling, leaking, pumping, emitting, emptying or dumping of any hazardous substances at the Airport.
  - D. Lessee is an independent entity, and is completely separate and distinct from the City. Nothing in or done pursuant to this Agreement shall be construed to restate the relationship of employer and employee, principle and agent, partners, or a joint venture between City and Lessee.
  - E. Upon termination of this lease, Lessee shall remove items owned by Lessee within sixty (60) days after the lease termination date and restore the premises described herein to its original condition, free and clear of all debris. Said removal and restoration shall be subject to the approval and inspection of the Building Inspector of the City of Superior. If said items are not removed in said sixty (60) day period, the Lessor shall thereupon remove them at Lessee's expense at the option of the Lessor.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 1<sup>st</sup> day of May, 2018.

LESSEE: DocuSigned by: 3/28/2018  
  
Brandon Hawkins  
**100 Octane Aviation**  
4804 Hammond Avenue  
Superior, WI 54880

**CITY OF SUPERIOR, WISCONSIN**

DocuSigned by:  
Jim Paine  
Mayor

DocuSigned by:  
Tessi Kalan  
City Attorney

DocuSigned by:  
Jean Vito  
Finance Director/Sr Admin Officer

DocuSigned by:  
Frog Prell  
City Clerk

Approved by Council: March 20, 2018